

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1263 CS Motor Vehicle and Motorcycle Insurance
SPONSOR(S): Ambler and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	11 Y, 5 N	Tinney	Cooper
2) State Administration Appropriations Committee			
3) Commerce Council	8 Y, 0 N, w/CS	Tinney	Bohannon
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Chapter 627, F.S., governs insurance rates and contracts. Part II of the chapter statutorily authorizes the benefits and other coverages that may be included in an insurance contract, outlines the requirements for an insurer to file policies and other forms with the Office of Insurance Regulation (OIR) for approval, the process for rate approval by OIR, and requires an insurer to provide a notice of cancellation, nonrenewal, or of the renewal premium, along with a variety of other provisions.

Part XI of ch. 627, F.S., relates specifically to motor vehicle and casualty policies and contracts. While OIR governs the rates an insurer may charge and the forms and policies an insurer may offer, the Department of Highway Safety and Motor Vehicles (DHSMV) is generally assigned by law to verify that each licensed driver and registered motor vehicle is covered by the minimum insurance required by law.

Under Florida law, a driver may elect to purchase comprehensive coverage, including allowances to repair the policyholder's vehicle and other property or vehicles damaged during an accident, allowances for medical expenses, and other benefits associated with full coverage. Alternatively, a driver may elect to purchase only the minimum coverage specified by law; the latter is popularly referred to as "personal injury protection" or PIP coverage.

Section 627.7289, F.S., is created by the bill relating to comprehensive coverage and motor vehicle insurance policies. Under the bill, if the owner of a motor vehicle or motorcycle is covered by a comprehensive policy and the policy would not pay the towing or impoundment fees associated with recovery of a stolen vehicle, the policy must so state on the declaration page.

State law authorizes either a county or a municipality to set maximum towing and storage rates to be used by local wrecker services. An informal telephone poll of several wrecker services in the state revealed that towing fees range from \$50-100 and storage charges range from \$5-15 per day, as authorized by local ordinances.

If a local ordinance does not set towing and storage fees, the Florida Highway Patrol (FHP) is authorized by law to establish maximum rates. Officials of the FHP report that there are very few areas in the state where towing and storage fees are not set by either the city or county. Under the bill, a driver who has comprehensive motor vehicle insurance may not be charged higher fees for towing and storing a stolen vehicle than the amount set by FHP for such services. If the owner or operator of a wrecker fails to timely notify a vehicle owner or the insurer that a stolen vehicle has been recovered, towed, and stored, neither the vehicle owner nor the insurer is liable for towing and storage fees until the wrecker service provides the notice required by law.

There does not appear to be a significant fiscal impact resulting from the bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government and Ensure Lower Taxes—The bill requires a motor vehicle insurance policy including comprehensive coverage either to include costs related to towing and storing a stolen vehicle or to notify the policyholder on the policy declaration page that such fees are not part of the comprehensive coverage.

B. EFFECT OF PROPOSED CHANGES:

Background: Florida's Insurance Industry

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR). The state's Chief Financial Officer (CFO) heads DFS while the head of OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida. Similarly, many insurers are required by law to seek OIR approval for their rates, or the prices they charge for coverage, and approval of the insurance forms they use for issuing policies. Similarly, OIR must approve the contracts or policies offered by an insurer, along with specialized or additional coverages available. The Office of Insurance Regulation investigates allegations of fraud against insurers and administers state laws governing the financial reserve requirements imposed on insurers. The regulation and licensure of insurance agents and agencies is the purview of DFS. Staff of DFS also provides consumer information and assistance through the Division of Consumer Services.

Motor Vehicle Insurance, Rates, and Contracts

Chapter 627, F.S., governs insurance rates and contracts. Part II of the chapter statutorily authorizes the benefits and other coverages that may be included in an insurance contract, outlines the requirements for an insurer to file policies and other forms with OIR for approval, the process for rate approval by OIR, and requires an insurer to provide a notice of cancellation, nonrenewal, or of the renewal premium, along with a variety of other provisions.

Part XI of ch. 627, F.S., relates specifically to motor vehicle and casualty policies and contracts. While OIR governs the rates an insurer may charge and the forms and policies an insurer may offer, the Department of Highway Safety and Motor Vehicles (DHSMV) is generally assigned by law to verify that each licensed driver and registered motor vehicle is covered by the minimum insurance required by law. Verification of insurance usually occurs annually when a motor vehicle registration is renewed, although a driver may be required to provide proof of insurance, i.e., an insurance card, at the request of a law enforcement officer during a routine traffic stop, as well.

Under Florida law, a driver may elect to purchase comprehensive coverage, including allowances to repair the policyholder's vehicle and other property or vehicles damaged during an accident, allowances for medical expenses, and other benefits associated with full coverage, subject to any applicable deductible. Alternatively, a driver may elect to purchase only the minimum coverage specified by law; the latter is popularly referred to as "personal injury protection" or PIP coverage. Regardless of the type of motor vehicle insurance coverage a driver selects, the contract or policy for motor vehicles is governed by part XI of ch. 627, F.S.

Current Mandatory Auto Insurance Coverage: PIP and Property Damage Liability

Under the Florida Motor Vehicle No-Fault law, motor vehicle owners are required to maintain \$10,000 of personal injury protection (PIP) coverage (ss. 627.730-627.7405, F.S.). PIP covers the vehicle owner, relatives residing in the same household, passengers or pedestrians involved in the motor vehicle accident who do not have their own PIP coverage, and persons driving the vehicle with the owner's permission. Vehicle owners must also maintain \$10,000 in property damage liability insurance (s. 324.022, F.S.).

Other Provisions Governing Motor Vehicle Insurance Policies

Section 627.7288, F.S., states that a motor vehicle policy in Florida providing comprehensive coverage or combined additional coverage may not charge the cost to replace the windshield against the applicable deductible associated with the policy. The law does not require a comprehensive policy to pay for towing or impound fees associated with a covered vehicle that is stolen and later recovered.

Theft of Motor Vehicles in Florida

The Florida Department of Law Enforcement (FDLE), through the Uniform Crime Report (UCR) Program, compiles crime statistics reported by local law enforcement agencies throughout the state. According to information provided by FDLE, for the period January-June, 2003, there were 38,972 vehicles stolen in the state; this includes automobiles, commercial and passenger trucks, buses, and motorcycles. During that same period, approximately 31,193 vehicles were recovered, some in the same area from which they were stolen and some vehicles are recovered elsewhere in Florida or in another state. Of the recovered vehicles, some may have been reported stolen before the January-June 2003 reporting period, so there is not an exact correlation between the number of vehicles stolen and subsequently recovered.

For January-June 2004, FDLE reports 36,102 autos, commercial and passenger trucks, buses, and motorcycles were stolen. In the same reporting period, law enforcement officials recovered an estimated 32,305 vehicles.

Towing and Wrecker Fees

Chapter 323, F.S., generally governs the operations of wreckers and tow trucks as the operations relate to towing, storing, or impounding a vehicle at the request of a law enforcement officer. State law does not govern the prices for towing and storage charged by a wrecker service, except under specified circumstances. Generally, each city and county commission sets the towing and storage rates for vehicles within their jurisdictions. This means the costs for towing and storing a vehicle are different throughout the state, depending upon the rates approved by the local city or county commission.

Section 166.043, F.S., for example, authorizes a municipality to set towing and storage rates to be used by local wrecker services. The law states that each county must establish the maximum rates to be charged for towing, removal, and storage of a vehicle from private property or to remove a vehicle at the request of law enforcement, however, the same law authorizes a municipality to set the maximum fee for the same towing services within the city's boundaries, at the discretion of the local city commission. In the event a city sets towing rates, the county's rates do not apply within the city limits. Similarly, s. 125.0103, F.S., authorizes a county to set the maximum fee for towing or storing a motor vehicle, but also allows a municipality within the county to establish the fees applicable within the city limits. An informal telephone poll of several wrecker services in the state revealed that towing fees range from \$50-100 and storage charges range from \$5-15 per day, as authorized by local ordinances.

The Florida Highway Patrol (FHP) of DHSMV is authorized by s. 321.051, F.S., to establish a wrecker operator system for use within areas under the jurisdiction of the Highway Patrol, i.e., state roads, highways, and interstate highways. The law directs FHP to use its wrecker operator system "for

removal and storage of abandoned vehicles, in the event the owner or operator is incapacitated or unavailable or leaves the procurement of wrecker service to the officer at the scene.” The law authorizes the FHP to “establish maximum rates for the towing and storage of vehicles” requested by FHP to be towed, however, the authority of FHP to set towing rates is granted only if the city or county in which the wrecker service is located has not already set towing rates for that city or county. Staff of FHP reports its wrecker operator system relies on the towing rates set within each local jurisdiction.

Under s. 713.78, F.S., a wrecker is authorized to claim a lien for towing and storage services if costs for such services remain unpaid despite attempts to contact the vehicle owner. A wrecker service must notify the vehicle owner, the owner’s insurer, and any other lienholders, after verifying the owner’s name and address through a local law enforcement agency or DHSMV. If an owner does not retrieve an impounded automobile and pay associated fees after receiving the required notices by certified mail and if no lienholder or insurer exists, a wrecker service may sell or take possession of the vehicle as provided by law.

Changes Proposed by the Bill

Section 627.7289, F.S., is created by the bill relating to comprehensive coverage and motor vehicle insurance policies. Under the bill, if a comprehensive motor vehicle policy does not cover the towing and storage fees associated with recovery of a stolen vehicle covered under the policy, the declaration page of the policy must notify the policyholder that such costs are not covered.

The bill also states that the fees for towing and storing a stolen vehicle may not exceed the fees approved by FHP for such services. Additionally, if the owner or operator of a tow truck does not notify a vehicle owner or the owner’s insurer once a stolen vehicle has been towed and stored, neither the owner nor his or her insurer is liable for towing and storage costs until the wrecker service notifies either party.

C. SECTION DIRECTORY:

Section 1 creates s. 627.7289, F.S., to specify conditions and amounts that may be charged a vehicle owner for towing and storing a vehicle covered by a comprehensive motor vehicle insurance policy if the vehicle has been stolen and recovered.

Section 2 specifies that the act takes effect January 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. The Office of Insurance Regulation indicates it will not incur costs associated with this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

State law authorizes either a county or a municipality to set maximum towing and storage rates to be used by local wrecker services. An informal telephone poll of several wrecker services in the state revealed that towing fees range from \$50-100 and storage charges range from \$5-15 per day, as authorized by local ordinances.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Representative Kevin Ambler (R, Lutz), sponsor of HB 1263, reported in a letter dated March 16, 2005, that HB 1263 "is the result of a new high school initiative called 'It Ought to be a Law'." The letter continues to explain that the bill was "drafted, researched and selected entirely by students of Gaither High School (situated in the heart of my district)." Representative Ambler anticipates a group of students from Gaither High School will discuss the bill as it is heard through the committee process: "to present their bill in our committee meetings and persuade other House and Senate members to vote in favor of their bill." Representative Ambler also states in his letter, "[t]his has been an amazing learning experience for the students and I will open this competition to other high schools in my district next year."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At the April 21, 2005 meeting of the Commerce Council, the council adopted a strike-all amendment to the bill. Under the amendment, insurers offering comprehensive coverage for motor vehicles and motorcycles no longer are required to pay towing and storage fees for stolen vehicles that are later recovered. Instead, if a policy providing comprehensive coverage does not cover such fees, the declaration page of the policy must state that such fees are not covered.

Additionally, if a vehicle owner has comprehensive insurance coverage, the fees for towing and storing a stolen vehicle that is later recovered may not exceed the towing and storage fees charged to a law enforcement agency. If the owner or operator of a wrecker service does not notify the vehicle owner or insurer after a stolen vehicle is towed and stored in the manner required by law, towing and storage fees may not accumulate until after either the vehicle owner or the insurer is notified as required by law.

This analysis has been updated to reflect the changes to the bill made by the Commerce Council at its 4/21/05 meeting.